

## **CHAPTER II – ADMINISTRATION AND ENFORCEMENT**

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### **§2.1 – ADMINISTRATION AND ENFORCEMENT**

#### **§2.2 – BOARD OF APPEALS**

#### **§2.3 – BOARD OF APPEALS PROCEDURES**

#### **§2.4 – APPEALS TO THE DECISION OF THE BOARD OF APPEALS**

#### **§2.5 – COMPLIANCE AND INSPECTIONS**

#### **§2.6 – PENALTIES**

#### **§2.7 – AMENDMENTS TO THIS ORDINANCE**

#### **§2.8 – AUTHORITY TO ASSESS FEES**

#### **§2.9 – MODIFICATION, VARIANCE, WAIVER, OR ADMINISTRATIVE ADJUSTMENT**

#### **§2.10 – RESERVED**

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### **§2.1 – ADMINISTRATION AND ENFORCEMENT**

Pursuant to A.C.A §14-17-203, the Benton County Planning Board was established in accordance with Ordinance No. 78-5 on June 21, 1978 with subsequent amendments by Ordinance 82-18 approved on September 7, 1982 and Ordinance 1978-05.

#### **A. Administration**

- i. The Benton County Planning Board shall be charged with the responsibility for the administration of this Ordinance. The Planning Board may adopt by-laws or internal rules and regulations as it deems necessary in order to ensure an orderly and systematic interpretation and administration of this Ordinance so as to serve the public health, safety, welfare, and general well-being of the citizens of Benton County.
- ii. In addition to the standards established by this Ordinance, all development shall comply with any other regulations or special requirements of the state, local or federal agencies.
- iii. Appeals to administrative or Planning Board decisions and land use interpretations shall be reviewed by the Board of Appeals.
- iv. Any appeal concerning roads shall be appealed directly to circuit court in accordance with Arkansas State Code A.C.A. §14-17-209.

#### **B. Enforcement**

It shall be the duty of the Benton County Planning staff to enforce this Ordinance and to bring any violations or lack of compliance herewith to the attention of the County's Prosecutor's Office.

In accordance with A.C.A §14-17-207(f) any individual aggrieved by a violation of any such plan or Ordinance may request an injunction against any individual or property owner in violation or may mandamus any official to enforce the provisions of the Ordinance.

## **§2.2 – BOARD OF APPEALS**

A Board of Appeals is hereby established to provide citizens the opportunity to appeal any administrative or Planning Board division on matters pertaining to this Ordinance. The Board of Appeals shall have such powers and duties as are provided by law or Ordinance. The Board of Appeals shall have the following functions:

### **1. Appeals of Interpretations**

To hear appeals from administrative decisions with respect to the enforcement and application of the Ordinance and affirm or reverse, in whole or part, the administrative decision. This may include alleged error, misinterpretation, oversight, or other means of incorrectly applying the provisions of this Ordinance including the provisions of the Flood Damage Prevention program and the provisions of the International Building Code (IBC) as determined by their respective chapters.

### **2. Land Use Determinations**

To determine, in cases of uncertainty, the classification of any land use not specifically enumerated in this Ordinance.

#### **A. Membership and Terms**

The Board shall consist of seven (7) members who shall be residents of Benton County, appointed by the County Judge, and confirmed by the Quorum Court for a term of two years, where four (4) members shall initially be appointed for the full two (2) years and the remaining three (3) members shall initially be appointed for one (1) year. Thereafter all members shall be appointed by the County Judge and Confirmed by the Quorum Court for terms of two (2) years each. No member shall serve more than two (2) consecutive full terms.

To the extent practicable and feasible, the Board shall include members with the following background and experience:

- i. One (1) Quorum Court member
- ii. One (1) land use attorney
- iii. One (1) professional engineer licensed in Arkansas
- iv. One (1) professional architect or landscape architect
- v. One (1) city, county or regional planner
- vi. One (1) realtor or developer, and
- vii. One (1) master builder or a person with ten (10) or more years of experience in construction or supervision of construction of buildings.

## **1. Alternate Members**

Three (3) alternate members, who shall be residents of the County, shall be appointed by the County Judge and confirmed by the Quorum Court to serve in the absence of, or disqualification of, the regular members. The first two (2) alternates appointed shall serve for terms of two (2) years and the third for one (1) year. Thereafter, all alternates shall be appointed for two-year terms.

## **2. Removal and Vacancies**

All members and alternates may be removed for cause by the County Judge, upon written charges after public hearing. The vacancy of any member or alternate member shall be filled by appointment of the County Judge and confirmation by the Quorum Court for the unexpired term only.

## **B. Organization**

### **1. Officers and Duties**

The Board of Appeals shall elect a Chair and Vice-Chair from among its membership. The Chairperson, or in his/her absence, the Vice Chairperson, shall preside at all meetings.

### **2. Meetings**

Meetings of the Board of Appeals shall be held on a regular schedule. The Chair, or in his absence, the Vice-Chair, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Appeals shall be open to the public. Agenda items requiring a public hearing shall require sufficient notice as required by law.

### **3. Required Attendance**

If a member fails to attend three (3) consecutive meetings or misses 20 percent (20%) or more of the meetings held during a calendar year, the County Judge, upon recommendation by the Chair, may declare the position vacant.

### **4. Quorum**

A quorum of the Board of Appeals shall consist of four (4) members. The concurring vote of four (4) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter before the Board of Appeals.

### **5. Office, Staffing, and Records**

- i. Office – The office of the Board of Appeals shall be the Planning Department or as may be otherwise designated by the County Judge.

- ii. Staffing – The Planning Department must provide the Board of Appeal with staff assistance necessary to enable it to discharge its duties including arrange for its meetings, and perform such other duties, consistent with the provisions of this chapter, as the adopted rules of the Board of Appeals require.
- iii. Records – The Planning Department shall be the custodian of the records of the Board of Appeals including all agendas, minutes, and other documents pertaining to the business of the Board.

## **§2.3 – BOARD OF APPEALS PROCEDURES**

### **A. Board of Appeals Application**

A written appeal must be filed by the applicant within thirty (30) days of the decision sought to be appealed. The appeal must include the following materials:

1. A completed copy of a Board of Appeals application. Notarized Owners affidavit (Owner, lessee, prospective purchase or legal representation must sign the application. A letter from the property owner giving permission to the applicant to represent the property, if applicable.)
2. Cover letter addressed to the Board of Appeals explaining what relief or action is sought and the justification for the request.
3. Eight (8) sets of survey plan/ site plan showing the lot size, location of all structures, existing and proposed, setbacks, parking and loading facilities, and septic system, if applicable. Such plan shall be the same as that required of the original application, should one have been required.
4. Photos of property and area of concern (as applicable) and other supplemental information as required.

### **B. Appeals Procedures**

1. Setting a Date – Upon filing of an appeal, the Planning staff shall schedule a hearing date.
2. Notice – The hearing shall be held within thirty (30) days of the application, preceded by at least fifteen (15) days' notice by certified mail to the appellant, and at the appellant's expense, to all landowners within a 500 feet radius from the property line, based on current records of the Assessor's database, via certified mail with return receipt. Such notice shall be sent no less than fourteen (14) days prior to the scheduled public hearing.
3. Public Hearing Sign: Public Hearing Sign shall comply with §4.8 of this ordinance.
4. The Board's decision shall be final, administratively.

## §2.4 – APPEALS TO THE DECISION OF THE BOARD OF APPEALS

1. County Quorum Court – A decision of the Board of Appeals may be appealed to the County Quorum Court prior to an appeal to a court of record. The County Judge shall be the chair of the Board of Administrative Appeals but shall vote only in the event of a tie. The County Quorum Court shall determine the number of Quorum Court members who shall sit on such an Appeal.
2. Court of Record – All appeals to the decision of the Board of Appeals shall be subject to appeal to a court of record having jurisdiction.

## §2.5 – COMPLIANCE AND INSPECTIONS

- A. **Compliance: Conditions Met as Precursor to certificate of occupancy** – No certificate of occupancy (CO) shall be issued for any development unless all conditions of approval have been met.
- B. **Inspection** – The enforcement entity and/or members of the Benton County Planning Board shall have the right to enter any development for purposes of examination in order to enforce the letter and spirit of this Ordinance. The right to enter extends from the applicant's authorization agreed to by making an application which shall be in effect through confirmation of compliance with any conditions so applied by decision or with this Ordinance.

## §2.6 – PENALTIES

A violation of this Ordinance or failure to comply with the provisions herein or failure to obey a lawfully directed communication from County officials or the Planning Board shall subject the specified person, firm, corporation, limited liability company, partnership, entity, or other private or personal combination, without restriction, to penalties consistent with §1-9 of Benton County Code of Ordinance.

## §2.7 – AMENDMENTS TO THIS ORDINANCE

This Ordinance may be amended in strict accordance with the provisions of A.C.A. §14-17-207-Adoption, Amendment, and Enforcement of official plans and implementing Ordinances.

## §2.8 – AUTHORITY TO ASSESS FEES

- A. **Establishment of Fee Schedule:** The Benton County Planning Board shall establish a schedule of fees which may be from time to time reviewed and modified by the Planning Board and subsequently approved by the Benton County Quorum Court.
- B. **Fee to be Paid in Full:** Until all applicable fees, charges and expenses have been paid in full by the applicant, no action shall be taken on any application or appeal.
- C. **Third Party Consultant Review Fees:** The Planning Board reserves the right to retain professional services including legal, architectural, engineering, land surveying, and such other consulting services in appropriate circumstances to protect the health, safety, environmental criteria and noise.

Independent engineers or other consultants may be retained for commercial or industrial large scale developments, subdivisions, planned unit developments, development master plans, or any other projects involving significant drainage, transportation, or other complex technical issues. Requests for review fees may only be made by a vote of the Planning Board in a regular meeting. Planning staff may use specifically programmed funds for consultants for the same purpose if an independent assessment of a technical report or data submitted by a consultant is necessary.

The Planning Board shall be reimbursed by the applicant for the reasonable fees and expenses of such consultants, and each application for a development review under this Ordinance hereunder shall contain an agreement by the applicant to that effect regardless of the decision on the project. The cost of special technical reviews shall not be onerous, exorbitant, unreasonable, or in excess of what the market would bear for such services.

- D. **Inspection:** The Board may establish fees for inspection and/or investigation of subdivision or other land developments.

## **§2.9 –MODIFICATION, VARIANCE, WAIVER, OR ADMINISTRATIVE ADJUSTMENT**

- A. **Waivers and Modifications:** Waivers and modifications are essentially the same action and may be taken by the Planning Board by regular vote as part of an existing hearing by the Board. Waivers and modifications are applicable to non-dimensional provisions of this Ordinance which, by the scrutiny of the Board and which may be informed by supporting evidence by staff or other experts, can be prudently and judiciously modified or waived to the extent reasonable and necessary to provide relief to the applicant as part of their development request. Waivers and modifications may be requested by an applicant via a formal request in writing that specifies the provision of the regulations where relief is sought and a justification for the request. Consideration of a specific waiver or modification may also be initiated by staff or the Board. As a distinction, a waiver would be the elimination of a provision while a modification would generally be a reduction in scope of a provision.
- B. **Variances:** Variances are relief to a dimensional provision of this Ordinance by an affirmative vote of two-thirds (2/3) of the vote of the total membership of the Planning Board. Note that a two-thirds (2/3) vote of the attending quorum is not sufficient.

The criteria to grant variances shall be, without exception, and singularly because strict compliance with any provision of this Ordinance would cause exceptional or undue hardship to the applicant. Additionally, extra expense, economic hardship, or additional outlay of capital funds or money shall never constitute grounds for exceptional or undue hardship. Hardship shall hereby be defined as:

1. There exists exceptional, extraordinary, or unique physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope.
2. Because of the exceptional physical circumstances, the strict application of this Ordinance would create an exceptional or undue hardship to the property owner.

3. The hardship is not self-imposed. While self-imposition may be a complicated assessment, generally it refers to fore knowledge of the limitation or reasonable expectation of fore knowledge upon assuming ownership or control of the property.
4. The variance, if granted, will not adversely affect the use and/or enjoyment of adjacent property as permitted under this Ordinance.
5. That the variance, if granted, will not change the character of the area in which the property is located, and is in keeping with the intent of this Ordinance; and,
6. That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Benton County.

**§2.10 – RESERVED**